IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2242 OF 2004

Mr. Mafatlal M. Patel & Ors ...Petitioners

Versus

Steel Authority of India Ltd. & Ors ...Respondents

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Mr. S.K. Jain, Advocate for Petitioners

Mr. Rajesh More, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.
DATED: 8TH SEPTEMBER, 2005

P. C.:-

1. Heard the learned counsel for the petitioners i.e. original accused Nos. 3, 4 and 6 and the learned A.P.P. for the State. None appears for the respondent No.1 i.e. original complainant though served.

2. The petitioners are seeking quashing of proceedings relating to Complaint No. 4012/S/2003 which is pending before the learned Additional Chief Metropolitan Magistrate, 4th Court, Girgaon, Mumbai. In the said case process was issued against the petitioners under Section 138 of Negotiable Instruments Act. The learned advocate for the petitioners submitted that the learned Magistrate committed an error in issuing process and the said process deserves to be set aside. It is further

submitted that if the process issued against the petitioners is set aside, the proceedings in respect of the petitioners would come to an end.

3. It may be stated here that the petitioners had preferred an application before the learned Magistrate for recall of process. The said application came to be rejected by the learned Magistrate. In view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal (2004) 7 SCC 338,** it is clear that the Magistrate does not have power to recall process. In this view of the matter, I am not inclined to interfere with the order of the learned Magistrate rejecting the application for recall of process.

4. The petitioners had also preferred revision before the Sessions Court at Bombay, there in, it was prayed that the order of issuance of process be recalled and the petitioners be discharged from the said case. The learned Sessions Judge by order dated 8.10.2004 dismissed the said revision on the ground that in view of the decision of the Supreme Court in the case of Adalat Prasad (Supra), the revision would not be maintainable.

5. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ

Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, I am of the opinion that the revision preferred by the petitioners is maintainable. In the revision the petitioners have prayed that the order of issuance of process be recalled and the petitioners be discharged. For the reasons recorded in my order dated 13.6.2005 passed in Cri. W.P. No.213 and order dated 21.6.2005 passed in Cri. application No.550 of 2005, I am of the opinion that the petitioners have an efficacious remedy of preferring revision.

6. In this view of the matter, the order dated 8.10.2004 passed by the learned Sessions Judge is clearly erroneous and deserves to be set aside. Accordingly, the said order is quashed and set aside. The learned Sessions Judge shall hear necessary parties in revision i.e. Criminal Revision Application No. 743 of 2004 afresh and thereafter dispose it of on merits.

7. I am informed that the matter is before the trial court on 4.10.2005. In view of this statement, the trial court shall not proceed with the trial on 4.10.2005 and for a period of three weeks thereafter.

8. Writ Petition is disposed of.

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